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RUEHMD/AMEMBASSY MADRID 3700
RUEHMN/AMEMBASSY MONTEVIDEO 5035
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C O N F I D E N T I A L LA PAZ 003099

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TAGS: ECON PGOV PREL EPET EMIN EINV BL

SUBJECT: BOLIVIA: DRAFT CONSTITUTION--THE STATE RULES

REF: LA PAZ 2244

Classified By: EcoPol chief Mike Hammer for reasons 1.4 (b) and (d).

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Summary

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¶1. (C) Ruling party Movement Toward Socialism (MAS) constituent assembly members pushed through "en grande" the MAS draft constitution with only a handful of opposition members present on November 26. The draft constitution has not been officially released: we obtained a copy from a contact (in a minority party) who was present during deliberations and voting. Theoretically, the constitution must still be approved "en detalle" (i.e., article by article) and "en revision" (i.e., in final draft) before being sent to the executive branch to be submitted for a public referendum. However, the MAS has previously disregarded legal niceties and may do so again, sending the constitution forward to referendum without any of the other required steps. The fact that the MAS pushed through the first stage of a constitution begs the question of whether it was legal to do so. The National College of Bolivian lawyers has declared it "null" on several counts. Many other legal authorities agree. However, the Constitutional Tribunal, decimated by government attacks and recent resignations, is unavailable to review the legal issues. So far, there are no indications about when or how the MAS will press forward.

¶2. (C) The draft constitution would concentrate power in the executive and would create a unicameral legislature (something that, at present, would eliminate the opposition-controlled Senate and leave President Evo Morales with virtually unchecked powers.) As promised by Vice President Garcia Linera, the new constitution draft is much more radical than previous versions. Evo caters to his indigenous base by creating "more than equal" status for indigenous citizens, who would have additional government bodies, autonomy, and prioritized access to health, education and property protection. The new constitution courts the female majority with explicit rights to nonviolence in the home, guarantees of equal pay for equal work, and protection

of employment during and after pregnancy. There is an extensive "motherhood and apple pie" list of guaranteed rights, including a right to dignified work, right to water, sewer systems, housing, "revolutionary" education, telecommunications, transportation, and a free health system.

End summary.

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Power to the People, or MAS Power to the MAS?
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¶3. (C) The new constitution would dramatically increase the power of the executive and the current ruling party. As expected, the constitution would allow for unlimited consecutive reelection of the president and vice president. The new election rules for the president would also allow for a president to be elected with only 40 percent of the vote, as long as the next runner up has less than 30 percent of the vote (Comment: this would significantly increase Evo's chances at indefinite reelection, as Evo draws around 40 percent hard-core support while polls show no opposition candidates with higher than 20 percent. End comment.) If no candidate receives at least 40 percent and at least 10 percent more than the closest runner-up, a second election would be held between the two front runners and the candidate with a simple majority would win. Voting age would also be lowered to sixteen, again presumably giving the MAS an advantage.

¶4. (C) The new legislative branch would be unicameral, eliminating the Senate (Comment: Since the Senate is currently the only functioning opposition check to Evo's powers--with the Constitutional Tribunal paralyzed by lack of judges--the new constitution would effectively eliminate any real opposition to the MAS and to Evo. While presumably an opposition party could win a majority of seats in the new unicameral legislature, it is currently not likely. End comment.) The current requirement for a two-thirds majority vote in the legislature would also be eliminated, thus allowing the current simple majority of MAS congressmembers to basically ignore the opposition.

¶5. (C) The draft constitution would also allow the President fairly broad powers to declare a state of emergency in the case of outside threat or domestic instability (a not-uncommon state of affairs in Bolivia.) The new constitution would require the legislative branch to agree to the state of emergency within the following 72 hours, but a MAS-controlled unicameral legislature is not likely to stand in the President's way. Any declaration of state of emergency within a year of a previous declaration would have to be pre-authorized by the legislature.

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Property Rights or Lack Thereof
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¶6. (C) The new constitution would allow for private property rights only if they have a social function and are not against the "collective interest." Intellectual property rights for traditional knowledge and cultural items would be emphasized, with the State being required to set up a register for collectively-owned traditional knowledge. (Comment: The Bolivian IP agency SENAPI is already focusing on this registry, to the detriment of industrial property claims. End comment.) The public would be given a role in "medical system decisions", and the medical system would specifically prioritize the use of generics. In addition, the draft constitution states that "access to medicines can not be restricted due to intellectual property rights." There are also statements declaring the state's interest in natural resources, which could bode ill for the hydrocarbon and mining sectors. A prohibition of private investment in "public utilities" could also adversely affect U.S. interests in electrical companies.

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Autonomies: Divide and Conquer

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¶ 7. (C) The draft constitution would provide for many different levels of autonomy, including departmental, regional, municipal, and indigenous/originario/campesino. This extreme decentralization would in effect weaken the departments, since a department such as Santa Cruz would receive departmental autonomy but would also have other autonomous units within its borders. In addition, the draft constitution recognizes among the protected forms of democracy the "cabildo" or public gathering and a number of indigenous ruling bodies elected by community traditions.

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Judicial Changes

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¶ 8. (C) Indigenous justice systems would be allowed and supported under the new Constitution. The name of the supreme court would be changed, although its basic structure would remain the same. The Constitutional Tribunal (which rules on constitutional issues) would have a quota in which at least half of the magistrates would be indigenous and would be elected by popular vote. A vaguely-defined system of "social control" would be instituted. (Comment: in the past, this "fourth power" has been described as the right of civic groups to analyze and confront government bodies. End comment.)

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Social Issues: Hints of Venezuela

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¶ 9. (C) The Catholic church would no longer be the official state religion. One of the primary functions of the State would be to "decolonize" the country. In an indication of a Venezuelan hand on the drafting pen, the new draft constitution states that the educational system should be "revolutionary." Foreign military bases will be prohibited on Bolivian soil. (Comment: This prohibition is likely a swipe at the United States, since Evo seems convinced that we either have a base in Bolivia or are planning one. Septel, end comment.) If foreign military forces wish to enter the country, permission from the legislature would be required. In the section on "international relations," the new constitution rejects and condemns "colonialism, neocolonialism and imperialism." (Comment: Evo has historically used 'imperialism' and "the empire" as synonyms for the United States. End comment.)

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Indigenous Rights: Some More Equal Than Others

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¶ 10. (C) Spanish and thirty-six indigenous languages would be recognized as official languages, and official state business would be required to be conducted in Spanish and at least one other official language. The section on indigenous rights reads very much like the UN Declaration on the Rights of Indigenous Peoples, which President Evo Morales signed into law on November 7, 2007. The list of rights specific to indigenous groups (and Bolivians of African descent, explicitly granted the same rights as indigenous citizens) would include rights to land, exclusive rights to renewable resources on their land, rights to a share in the benefits of non-renewable resources, rights to be consulted on any law that "might affect them", rights to self-governance, rights to participation in all levels of government, rights to education in their language, and prioritized rights to all state benefits. (Comment: a well-known indigenous leader recently commented publicly that guaranteeing special protections to a majority group--such as indigenous citizens in Bolivia--makes little sense. It will be interesting to see how this will unfold in Bolivia, particularly since intra-indigenous conflicts are already causing difficulty in land claims, as altiplano indigenous campesinos migrate to lands traditionally used by other, smaller, indigenous groups. End comment.)

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Free(ish) Speech
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¶11. (C) Under the new constitution, Bolivians will have the right to freedom of thought and expression with "legitimate ends." (Comment: This caveat is not defined in the draft constitution, and depending on the interpretation by the courts or on regulations and decrees from the executive branch, freedom of speech could be significantly limited.) In the section on the media, the new constitution would prohibit "monopolies or oligarchies" and would fund community media networks. Freedom of expression and publication is guaranteed "without censorship" as long as these rights are "exercised in agreement with the principle of responsibility." In fact, the draft constitution states that "the information and the opinions emitted via the media should respect the principles of truth and responsibility," two undefined qualities that could significantly impact the freedom of the press. The draft constitution would also give the state the right to regulate investment in the media, based on "general interests".

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Comment
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¶12. (C) This draft constitution is overall the most radical of the various draft constitutions made public, with almost no indication of any opposition input. Since this is the draft that the MAS supported, it is not surprising that there are clear similarities with the August 14 draft constitution that was submitted to the Constituent Assembly by the executive branch (reftel.) At the time of that draft constitution, some MAS officials admitted that their draft had been written with the help of Venezuelan advisors, and the new draft constitution also shows Venezuelan influence. Indefinite reelection of the president, a unicameral legislature, and increased state role in both the economy and the media clearly would give Evo considerable power and mirror Venezuelan President Hugo Chavez's march toward a statist, populist government. The head of the MAS delegation in the Constituent Assembly said of the reasoning behind the new constitution: "We, the majorities, have the right to govern in the next 100 years, not only one government, but many governments. Thus, the party that wins is going to handle the executive, legislative and judicial powers."

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